

CORA LEE JENSEN-GORE

IBLA 82-711

Decided June 2, 1982

Appeal from decision of the Arizona State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. A MC 60937.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper office of the Bureau of Land Management within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Assessment Work

Evidence of assessment work must be delivered to and received by the proper Bureau of Land Management office by the due date in order to be timely filed. Depositing a document in the mails does not constitute filing.

APPEARANCES: Cora Lee Jensen-Gore, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Cora Lee Jensen-Gore appeals the March 8, 1982, decision of the Arizona State Office, Bureau of Land Management (BLM), which declared Hidden Quarries

#1 placer mining claim, A MC 60937, abandoned and void because no evidence of assessment work or notice of intention to hold the claim was filed with BLM on or before December 30, 1980, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1. The decision indicated that evidence of assessment work was received, but not until December 31, 1980.

Appellant's mining claim was located on June 18, 1946, and the copy of the notice of location was filed with BLM on September 7, 1979. The 1979 evidence of assessment work was filed with BLM on October 3, 1979.

In her statement of reasons, appellant asserts that she mailed a copy of the evidence of assessment work to BLM with a letter dated December 15, 1980. However, the letter received by BLM was not actually postmarked until December 30, 1980.

[1] Section 314 of FLPMA, requires the owner of an unpatented mining claim located prior to October 21, 1976, to file on or before December 30 of each calendar year after recordation of the claim with BLM, a notice of intent to hold the claim or proof of assessment work. Failure to so file is statutorily considered abandonment of the claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(d) (1976), and 43 CFR 3833.4. Tako Mining, 63 IBLA 206 (1982); see Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

[2] With regard to appellant's assertion that she mailed evidence of assessment work on December 15, 1980, the Board has repeatedly held that a mining claimant, having chosen the means of delivery, must accept the responsibility and bear the consequences of loss or untimely delivery of her filings. See Tako Mining, *supra*; Bart Cannon, 57 IBLA 281 (1981). Filing is accomplished when a document is delivered to and received by the proper BLM office. Depositing a document in the mails does not constitute filing. 43 CFR 1821.2-2(f); Tako Mining, *supra*. 1/

In the absence of the fact that BLM did timely receive evidence of assessment work performed on appellant's claim, BLM properly declared the claim abandoned and void in accordance with FLPMA, *supra*, and 43 CFR 3833.2. Carl W. St. Claire, 63 IBLA 125 (1982). This Board has no authority to excuse lack of compliance with the statute or to afford relief from statutory consequences. Lynn Keith, *supra*.

1/ While appellant made a timely filing of copies of her affidavits of assessment on December 5, 1980, for nine claims located in Coconino County, she indicated in that filing that she had sent to Yavapai County for a copy of the affidavit of assessment for AMC 60937, and that she would send it to BLM "just as soon as I receive it." Thus, appellant did not make the filing with BLM until December 31. However, 43 CFR 3833.2-2(a) requires only that the document filed with BLM be a copy of that which was or will be filed in the county. Therefore, in the future appellant need not wait to receive copies from the county before filing with BLM.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Bruce R. Harris
Administrative Judge

